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IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 43

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	
)	
v.)	Docket No. 29421
)	
EVERETT A. FEES,)	
)	
Defendant-Respondent.)	
)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for Kootenai County. The Hon. Fred M. Gibler, District Judge.

The order of the district court is vacated and the case is remanded.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.
Kenneth K. Jorgensen argued.

Frederick G. Loats, Coeur d'Alene, for respondent. Frederick G. Loats argued.

In a unanimous opinion the Idaho Supreme Court reversed the district court's order suppressing all evidence obtained in a search of a residence.

A state and federal law enforcement investigation led authorities to suspect that defendant-respondent Everett A. Fees was distributing a substantial amount of marijuana from his residence in Hayden, Idaho. Much of the information came from an informant in Montana who told police that he had been purchasing marijuana from Fees once or twice a month for two years and that he usually purchased five pounds at a time. He stated that he usually met Fees at his house or restaurant and that Fees said he stored the

marijuana in his basement. The Informant agreed to make a controlled buy of marijuana from Fees.

The Informant telephoned Fees to arrange to purchase five pounds of marijuana. Fees stated that he would travel to Eugene, Oregon, to obtain the marijuana from his supplier and that the Informant must pay in advance. They arranged to meet the same day at the Wal Mart store in Sandpoint, Idaho. Prior to that meeting, the police gave the Informant \$6,500 in \$20 bills, which the police had photocopied to record their serial numbers. Idaho State Police Detective Terry Morgan then used binoculars to observe the Informant's meeting with Fees and recorded the meeting with a video camera and an audio transmitter that was attached to the Informant. During the meeting, the Informant gave Fees the \$6,500, and Fees said that he would fly to Portland, Oregon, that day and be back by Saturday.

When Fees returned from Portland, the Informant contacted him to arrange delivery. Fees stated that the Informant's five pounds of marijuana had arrived and asked whether the Informant wanted an additional two pounds that they had previously discussed. The Informant answered that he would like the additional marijuana, and they arranged to meet that evening at Fees's restaurant. The police observed Fees load a large box and his briefcase into the trunk of a car that he had rented and drive away from his house. After Fees had driven out of sight from his house, the police stopped and arrested him. The police impounded the car pursuant to established procedure.

Fearing that Fees's wife may have learned of his arrest and may attempt to destroy evidence, the police entered Fees's house to secure it while waiting for a search warrant. They searched for and removed the occupants and prevented anyone from entering the house. Some of the officers observed evidence of a marijuana growing and distribution operation while in the house. They were in the house from four to six minutes, except for one officer who remained in the house for about ten minutes while waiting for Fees's wife to get dressed.

Detective Morgan sought a search warrant from a magistrate judge. He did not appear before the magistrate, but testified by telephone. At the conclusion of the hearing, the magistrate approved a search of Fees's house, restaurant, and vehicles and the rental car, and he authorized the detective to sign the magistrate's name to the search warrant. The magistrate himself did not personally sign the search warrant. The officers then executed the search warrant.

Fees filed a motion seeking to suppress all evidence obtained by the police during the traffic stop, the entry and later search of his house, and his post-arrest interrogation. On November 15 and 21, 2002, the district court heard the motion to suppress, and on January 22, 2003, it issued its memorandum opinion and order granting the motion in part. The district court held that the search warrant was invalid because the magistrate did not sign another original of the warrant after authorizing the detective to sign the magistrate's name to the original warrant in the detective's possession. As a result, the court ordered that all evidence obtained during the search of the residence must be

suppressed. The district judge also ordered that any evidence obtained during the entry to secure the residence be suppressed because the warrant was invalid and the entry was made before the warrant was issued. The district court denied the remainder of the motion to suppress. The State then appealed.

In an opinion released today, the Idaho Supreme Court vacated the district court's order suppressing evidence and remanded the case for further proceedings.